for the plaintiff's full damages. *Kerper* v. *Counties Gas & Electric Co.*, 77 Leg. Intell. 868 (Pa.).

Under the acts as originally framed, a non-negligent employer could not recover from a third party whose negligence caused him to pay compensation to an employee. *Interstate Telephone Co.* v. *Public Service Electric Co.*, 86 N. J. L. 26, 90 Atl. 1062; see 28 HARV. L. REV. 307. The mischief of this doctrine lay in imposing liability without fault on the employer while the negligent third party escaped. To relieve this situation the so-called subrogation clauses were inserted in the acts. A case where the party seeking reimbursement is himself negligent is not within the reason of this remedy. Moreover, to hold the statute applicable here is to subvert the principle that there can be no indemnity between joint tortfeasors. *Central of Georgia R. R. Co.* v. *Macon R. R. & Light Co.*, 9 Ga. App. 628, 71 S. E. 1076; *Union Stockyards Co.* v. *Chicago R. R. Co.*, 196 U. S. 217. The literal words of a statute must be construed in the light of its intent. *Holy Trinity Church* v. *United States*, 143 U. S. 457; see BLACK, INTERPRETATION OF LAWS, 2 ed., 68. Subrogation should therefore be denied the employer and the employee allowed to recover only his damages minus the *pro tanto* satisfaction of the compensation. *The Emilia S. De Perez*, 248 Fed. 480. Indeed, some of the subrogation clauses expressly exclude cases where the employer was himself negligent. See 1917 HURD'S ILL. REV. STAT., c. 48, § 152b. In England, indemnity from the negligent third person is apparently regarded as an independent right of the employer. See BEVEN, EMPLOYERS' LIABILITY, 4 ed., 696. Accordingly, where the employer is also negligent recovery is denied. *Cory & Son* v. *France, Fenwick & Co.*, [1911] 1 K. B. 114. But the American authority is in accord with the principal case. *Otis Elevator Co.* v. *Miller & Paine*, 240 Fed. 376; *Shreveport* v. *Southwestern Gas Co.*, 145 La. 680, 82 So. 785.

PHYSICIANS AND SURGEONS — LIABILITY OF PHYSICIAN FOR NEGLIGENCE OF ASSISTANT. — Defendant doctor was treating the plaintiff with hypodermic injections. During defendant's absence on vacation his woman office assistant administered the hypodermic, according to his prior instructions. The assistant negligently broke off and left the needle in the plaintiff's arm with serious resulting injury. *Held*, the plaintiff may recover. *Mullins* v. *Du Val*, 104 S. E. 513 (Ga.).

The line between an agent and an independent contractor is not always easy to draw. In general the test is whether the employer retains control and supervision of the details of the work, or merely can demand the result. See *Harrison* v. *Collins*, 86 Pa. 153; *Morgan* v. *Smith*, 159 Mass. 570; MECHEM, AGENCY, § 747. A doctor, for example, has no control over the details of the work of some one he recommends as a substitute when he goes away, and accordingly the substitute is held to be an independent contractor. *Moore* v. *Lee*, 211 S. W. 214 (Tex.); *Keller* v. *Lewis*, 65 Ark. 578, 47 S. W. 755. The same principle applies to a post-operative hospital nurse or an associate physician during an operation. *Hunner* v. *Stevenson*, 122 Md. 40, 89 Atl. 418; *Morey* v. *Thybo*, 199 Fed. 760. But in the principal case the assistant is subject to her employer's control, whether exercised or not, and in carrying out in detail his instructions is an agent. *Hancke* v. *Hooper*, 7 C. & P. 81.

PROXIMATE CAUSE — UNFORESEEN RESULTS — SUICIDE CAUSED BY INSANITY. — A workman received an injury to his hand. As a result of depression he became insane and committed suicide. *Held*, that his dependents can recover under the Workmen's Compensation Act. *Marriott* v. *Maltby Maine Colliery Co.* 37 T. L. R. 123 (C. A.).

The case is in conformity with the generally accepted rule that when the immediate cause of an injury is itself directly caused by an act, that act is the

proximate cause of the injury. *Scott* v. *Shepherd*, 2 Wm. Bl. 892; *Isham* v. *Dow*, 70 Vt. 588, 41 Atl. 585. A few American courts have refused to follow this rule when the actual result could not have been foreseen. *Ryan* v. *N. Y. Central R. R.*, 35 N. Y. 210; *Wood* v. *Pennsylvania R. R.*, 177 Pa. St. 306, 35 Atl. 699. And for this reason some American courts deny recovery for death due to insanity or mental disorder. *Sheffer* v. *Washington, &c. Ry.*, 105 U. S. 249; *Stevens* v. *Steadman*, 140 Ga. 680, 79 S. E. 564. But since foreseeability of result is not the proper test of proximate causation these cases must be regarded as unsound. See J. H. Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633, 644. See also 27 HARV. L. REV. 394. And a more recent American case properly allowed recovery under a Workmen's Compensation statute for death by suicide due to insanity. *Re Sponatski*, 220 Mass. 526, 108 N. E. 466. Foreseeability properly has a place in proximate causation only when an independent force — *i. e.*, a force not caused by the original force — has intervened. See *Ide* v. *Boston R. R.*, 83 Vt. 66, 74 Atl. 401; *Gilman* v. *Noyes*, 57 N. H. 627. See also 33 HARV. L. REV. 650. The true test in the cases where insanity causes death is whether the insane man exercised any volition in bringing about his own death. If he did, the act causing insanity is a remote cause only. *Daniels* v. *New York, &c. R. R.*, 183 Mass. 393, 67 N. E. 424; *Withers* v. *London R. R.*, [1916] 2 K. B. 772.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — PERSONAL TAX IMPOSED ON NONRESIDENT PRESENT WITHIN THE STATE. — An Alaska statute imposed an "annual" tax of $5 on "each male person" (with certain exceptions) within the territory and provided that it should be deducted by employers from the wages of employees who were subject to and had failed to pay the tax. Libellant, who was domiciled in California, was for three months during which the tax fell due employed in the fishing industry in Alaska. He did not pay the tax and left the territory. Thereafter respondent, his employer, paid the tax and deducted it from his wages which were payable in California. *Held*, that the tax was valid and the deduction proper. *Alaska Packers' Ass'n.* v. *Hedenskoy*, 267 Fed. 154.

For a discussion of the principles involved in this case, see NOTES, p. 542, *supra*.

TAXATION — PARTICULAR FORMS OF TAXATION — INCOME TAX — APPRECIATION IN VALUE OF PROPERTY AS INCOME. — A taxpayer sold bonds acquired before March 1, 1913, the effective date of the Sixteenth Amendment, at an advance over the market value of the bonds on that date. In accordance with a provision of the Income Tax Act of 1916 a Collector of Internal Revenue taxed this excess as income for 1916, the year of the sale. *Held*, that such increase in value is not income and that the tax is unconstitutional. *Brewster* v. *Walsh*, 268 Fed. 207 (Conn.).

For a discussion of this case, see NOTES, p. 536, *supra*.

TORTS — LIABILITY WITHOUT INTENT OR NEGLIGENCE — OPERATION OF DEFECTIVE AUTOMOBILE. — Defendant bought a twelve-year old automobile. His servant inspected the car and started home with it. Because of a latent and undiscovered defect, the steering gear suddenly loosened, the car swerved, and plaintiff was injured. By the finding of the court there was no negligence in the inspection or driving of the car. *Held*, that the plaintiff recover. *Hutchins* v. *Maunder*, 37 T. L. R. 72 (K. B.).

The rule of *Rylands* v. *Fletcher* has been liberally interpreted in England and many of the United States. See *Charing Cross Supply Co.* v. *London Hydraulic Power Co.*, [1914] 3 K. B. 772; *Musgrove* v. *Pandelis*, [1919] 2 K. B. 43; *Bradford Glycerine Co.* v. *Mfg. Co.*, 60 Ohio St. 560. But it has been applied only to things which have an inherent tendency to break forth and do damage.